

★ SEP 3 - 2014 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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BROOKLYN NAVY YARD DEVELOPMENT :
CORP., :

Plaintiff, :

-against- :

HARBOR DIESEL FUEL SERVICES, INC., :
and the M/T ACE, *her engines, tackle,* :
equipment, and furnishings, in rem, :

Defendants. :
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MEMORANDUM & ORDER

10-cv-5715 (ENV) (VVP)

VITALIANO, D.J.,

On July 16, 2013, the Court granted default judgment against defendants and referred this matter to Magistrate Viktor V. Pohorelsky for inquest to determine appropriate relief. On August 1, 2014, Judge Pohorelsky, in his report, recommended that plaintiff be awarded \$77,472.00, comprising \$57,600.00 in damages, and \$19,872.00 in pre-judgment interest, as well as post-judgment interest awarded from the day judgment is entered. Judge Pohorelsky further recommended that the Court declare that the vessel M/T ACE was abandoned by her owners, and issue an order permitting plaintiff to remove and sell that vessel from its premises.

In reviewing a report and recommendation ("R&R") of a magistrate judge, a district judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). A district judge is required to "make a *de novo* determination upon the record, or after

additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made" by any party, Fed. R. Civ. P. 72(b), but where no timely objection has been made, the "district court need only satisfy itself that there is no clear error on the face of the record" to accept a magistrate judge's R&R. *Urena v. New York*, 160 F. Supp. 2d 606, 609–10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Judge Pohorelsky's R&R gave proper notice that any objection had to have been filed within 14 days of receipt.¹ Neither plaintiff nor defendant has objected to Judge Pohorelsky's R&R at all, much less within the time prescribed. In accord with the applicable clear error standard of review, the Court finds Judge Pohorelsky's R&R to be correct, well-reasoned, and free of any clear error. The Court, therefore, adopts it in its entirety as the opinion of the Court.

Conclusion

In line with the foregoing, plaintiff is awarded \$77,472.00 and post-judgment interest in the amount of nine percent *per annum* against defendant Harbor Fuel Services, Inc. The Court declares that the vessel M/T ACE was abandoned by her owners, and plaintiff should submit an appropriate proposed order for entry by the Court which would authorize plaintiff to sell the vessel M/T ACE. Any sale should

¹ On August 4, 2014, plaintiff served a copy of the R&R, by certified mail, on defendant Harbor Fuel Services, Inc. at its last known address and through the New York Secretary of State.

be reported in the record, and any proceeds from the sale are to be used to reduce the amount of the judgment.

The Clerk of Court is directed to enter judgment in accordance with this Memorandum & Order and to mark the case closed for administrative purposes.

SO ORDERED.

**Dated: Brooklyn, New York
August 31, 2014**


s/Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge